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Relevant Provisions of The Warsaw Convention

Article 17

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

49 Stat. 3018.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

49 Stat. 3019.

Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

2. In the cases covered by Article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

49 Stat. 3020.

Article 25(1)

1. The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

* * *

49 Stat. 3020.

Article 28(2)

* * *

2. Questions of procedure shall be governed by the law of the court to which the case is submitted.

49 Stat. 3020.

Article 29(2)

* * *

2. The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

49 Stat. 3021.

Relevant Provisions of the Death on the High Seas Act, 46 U.S.C. § 761 *et seq.*

§ 761. Right of action; where and by whom brought

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

§ 762. Amount and apportionment of recovery

The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

§ 764. Rights of action given by laws of foreign countries

Whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding.

§ 765. Death of plaintiff pending action

If a person die[s] as the result of such wrongful act, neglect, or default as is mentioned in section 761 of this title during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect, or default, the personal representative of the decedent may be substituted as a party and the suit may proceed as a suit under this chapter for the recovery of the compensation provided in section 762 of this title.

§ 767. Exceptions from operation of chapter

The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone.

THE INTERNATIONAL TECHNICAL COMMITTEE OF LEGAL AVIATION EXPERTS

REPORT
of the Third Session

May 1928

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EXHIBIT C

A REPORT

submitted by the International Technical Committee of Legal Aviation Experts
(the "C.I.T.E.J.A.")

ON BEHALF OF THE SECOND COMMISSION

by Mr. Henry de Vos, The Reporter

The attached draft convention, subjected to deliberation by the International Technical Committee of Legal Aviation Experts (the "C.I.T.E.J.A."), has the objective of **certain rules relating to the documents of carriage by air**—the travel ticket, the baggage ticket, the air bill of lading—**as well as the liability of the carrier by air and the limitation of such liability.**

This draft is the result of seven previous texts concerning the liability of the carrier and the bill of lading.

This high number of different redrafts indicates the breadth of the **preparatory studies** which have been done by your Committee and indicates as well the necessity to briefly recall to mind the process of this work.

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1. A first preliminary draft on the liability of the carrier was submitted by the French government to the Conference of October 26, 1925.

2. This text was refashioned by the Second Commission instituted by the Conference and submitted to the latter on

November 3, 1925. Our eminent colleague, Mr. Pittard, was the reporter thereof. It established the bases of the draft on the subject matter of liability and on the limitation of such liability.

3. On November 6, 1925 the plenary Conference accepted a third text which slightly modified the preceding one.

4. A first preliminary draft on the bill of lading was then submitted by the undersigned reporter to the Second Commission which met in Paris on March 30, 1927.

5. The text then adopted by the International Technical Committee of Legal Aviation Experts in April of 1927 contains modifications accepted following upon the discussions which took place on the preceding text.

6. Following upon the discussion held during the course of the mentioned meeting of the International Technical Committee of Legal Aviation Experts (April of 1927) for examining the possibility of consolidating the two subjects into a single convention, a new preliminary draft was submitted by the undersigned reporter in June of 1927.

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7. This text was modified in accordance with the deliberations of your Second Commission which met in Brussels from November 7 to November 10, 1927.

8. The preliminary draft, as it is presently submitted, reproduces the texts amended as a result of the discussions of the Second Commission which met in Paris on March 21 and March 22, 1928.

This draft is comprised of the following:

There is a Chapter 1 which provides the purpose of the convention and the precise limits of its scope of application.

A Chapter 2, comprised of three sections, contains the essential rules concerning the documents of carriage—the passenger ticket, the baggage check and the air waybill.

A Chapter 3 encompasses the provisions relating to the liability of the carrier and the limitation of such liability.

Chapter I—Purpose

The first two articles of the convention correspond to the first articles of all of the drafts.

It is appropriate to point out, however, that the third paragraph of Article 1 was specially added to the text at the request of the British Delegation in order to cover the case of successive transports.

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Chapter II—The Liability of the Carrier

(Article 21, et seq.)

With certain amendments, these provisions adopt the rules contained in the draft of the convention adopted by the plenary Conference of November 1925.

The reporter at that time stressed the main points and the doctrine of fault was accepted for the liability of the carrier to the passengers and for the goods; the burden of proof is incumbent on the carrier, and the presumption of fault is thus its responsibility, though this presumption is limited by the very nature of the transport which is involved.

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With respect to the jurisdiction of the court, the draft adopts the court of the registered office of the operation, or of the place where the latter has an establishment through which the contract has been made, as well as the place of destination. In the event that the aircraft fails to arrive, the court of the place of the accident may also be given jurisdiction.

The jurisdiction of the domicile of the defendant has been replaced by a formula which is more practical for the carrier's business.

The most recent draft also specifies that the actions must be brought before a court of one of the contracting states.

In addition, it provides that, in the event of death, all actions must be brought before the first court to which the case was submitted, and that the judgment thus rendered shall have the force of *res judicata* in all of the contracting states.

These provisions are of such nature as to provide a broader application and greater uniformity for air law.

In the event of the death of the party legally representing the estate, any action, of whatever nature whatsoever, may be brought by those persons to whom such action pertains in accordance with the law of the nation of the deceased or, in the absence thereof, in accordance with that of his last domicile. But such action can only be exercised under the conditions and within the limitations which are provided for by the convention.

These provisions have the specific purpose of impeding persons who claim to have the right to bring actions outside of the convention; all of them have to adhere to the limitations of this convention.

The question has been posed in this regard as to whether one might not define the category of damages which is susceptible to compensation.

Although this question has appeared to be a very interesting one, a satisfactory solution has not been possible to be found prior to knowing exactly the bodies of statutory law of the various countries. It is understood that the question is to be studied subsequently when the point is clarified on determining which persons, according to the laws of the various nations, have the right to exercise an action against the carrier.

It should also be indicated that Article 33 accepts arbitration clauses which do not infringe on the rules of jurisdiction provided for in the convention.

These are the general lines of the draft which contain the two subject matters already adopted with respect to their essential principles by the International Technical Committee of Legal Aviation Experts (the "C.I.T.E.J.A.").

The work thus submitted has appeared to the Second Commission to be sufficiently complete in order to be the subject matter of a final convention, which would be a first step toward uniformity in air law, and it is in order to complete this first stage that it proposes to the International Technical Committee of Legal Aviation Experts that the draft of the convention which is submitted to it be ratified.

May 15, 1928
Henry De Vos.

COMITÉ INTERNATIONAL TECHNIQUE
D'EXPERTS JURIDIQUES AÉRIENS

COMPTE RENDU

DE LA 3ᵉ SESSION

MAI 1928

ANNEXE C

RAPPORT

présenté au Comité International Technique d'Experts Juridiques Aériens

(C. I. T. E. J. A.)

AU NOM DE LA DEUXIÈME COMMISSION

par M. Henry DE VOS, Rapporteur

Le projet de Convention ci-joint, soumis aux délibérations du C. I. T. E. J. A., a pour objet : *certaines règles relatives aux documents de transport aérien :* billet de passage, bulletin de bagages, et lettre de transport aérien, *ainsi qu'à la responsabilité du transporteur aérien et à la limitation de cette responsabilité.*

Ce projet est l'aboutissement de sept textes antérieurs concernant soit la responsabilité du transporteur, soit la lettre de transport.

Ce nombre élevé de rédactions différentes indique l'ampleur des *études de préparation* qui ont été faites par les memores de votre Comité et indique en même temps la nécessité de rappeler brièvement le processus de ces travaux.

1. Un premier avant-projet sur la responsabilité du transporteur fut présenté par le Gouvernement français à la Conférence du 26 octobre 1925.

2. Ce texte fut remanié par la Deuxième Commission instituée par la Conférence et soumis à celle-ci le 3 novembre 1925. Notre éminent collègue, M. PITTARD, en fut le Rapporteur. Il établit les bases du projet en matière de responsabilité et de limitation de cette responsabilité.

3. La Conférence plénière admit, le 6 novembre 1925, un troisième texte modifiant légèrement le précédent.

4. Un premier avant-projet sur la lettre de transport fut présenté ensuite par votre Rapporteur à la Deuxième Commission qui se réunit à Paris le 30 mars 1927.

5. Le texte adpoté ensuite par le C. I. T. E. J. A. en avril 1927 contient les modifications admises à la suite des discussions qui eurent lieu sur le texte précédent.

6. A la suite de la décision prise au cours de cette même réunion du C. I T. E. J. A. (avril 1927) d'examiner la possibilité de fusionner les deux matières en une Convention unique un nouvel avant-projet fut présenté par votre Rapporteur en juin 1927.

7. Ce texte fut modifié conformément aux délibérations de votre Deuxième Commission réunie à Bruxelles du 7 au 10 novembre 1927.

8. L'avant-projet tel qu'il se présente actuellement reproduit les textes amendés à la suite des discussions de la Deuxième Commission qui s'est réunie à Paris les 21 et 22 mars 1928.

Ce projet se présente comme suit :

Un chapitre 1er donne l'objet de la Convention et les limites précises de son champ d'application.

Un chapitre 2 contient en trois sections les règles essentielles concernant les titres de transport : billet de passage, bulletin de bagages et lettre de transport aérien.

Un chapitre 3 renferme les dispositions relatives à la responsabilité du transporteur et à la limitation de cette responsabilité.

Chapitre I. — Objet

Les deux premiers articles de la Convention correspondent aux premiers articles de tous les projets.

Il convient cependant de signaler que le troisième alinéa de l'article 1er a été spécialement ajouté au texte à la demande de la Délégation Britannique pour couvrir le cas de transports successifs.

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Chapitre III. — Responsabilité du transporteur

(Articles 21 et suivants)

Ces dispositions reprennent, moyennant certains amendements, les règles contenues dans le projet de Convention adopté par la Conférence plénière de novembre 1925.

Le Rapporteur à cette époque en a souligné les points principaux la théorie de la faute a été admise dans la responsabilité du transporteur à l'égard des passagers et des marchandises ; le fardeau de la preuve incombe au transporteur ; il existe donc une présomption de faute à sa charge, mais cette présomption est limitée par la nature même du transport dont il s'agit.

Citons à cet égard le rapport de M. PITTARD :

« Que peut-on exiger du transport aérien ? Une organisation normale de son exploitation, un choix judicieux de son personnel, une surveillance constante de ses agents et préposés, un contrôle sérieux de ses appareils accessoires et des matières premières.

* * * *

* * * *

En ce qui concerne la compétence du tribunal, le projet retient le tribunal du siège de l'exploitation ou du lieu ou celle-ci possède un établissement par les soins duquel le contrat a été conclu, et le lieu de destination. En cas de non-arrivée de l'aéronef, le tribunal du lieu de l'accident peut également être rendu compétent.

La compétence du domicile du défendeur a donc été remplacée par une formule plus pratique pour l'exploitation de l'entreprise de transports.

Le dernier projet précise d'ailleurs que l'action doit être portée devant un tribunal d'un des Etats Contractants.

Il prévoit en outre qu'en cas de mort, toutes actions devront être portées devant le premier tribunal qui aura été régulièrement saisi et que le jugement ainsi rendu aura force de chose jugée dans tous les Etats Contractants.

Ces dispositions sont de nature à obtenir une application plus étendue et une unification plus grande du droit aérien.

En cas de décès de l'ayant droit, toute action, à quelque titre que ce soit, peut être exercée par les personnes auxquelles cette action appartient d'après la loi nationale du défunt ou, à défaut, d'après celle de son dernier domicile. Mais cette action ne peut être exercée que dans les conditions et les limites prévues par la Convention.

Ces dispositions ont un but précis qui est d'empêcher des personnes qui prétendent avoir des droits d'exercer des actions en dehors de la Convention ; elles doivent toutes rentrer dans les limites de cette Convention.

La question a été posée de savoir si l'on ne pourrait, à cet égard, déterminer la catégorie de dommages sujets à réparation.

Bien que cette question ait paru très intéressante, il n'a pas été possible de trouver une solution satisfaisante avant de connaître exactement les législations des différents pays. Il a été entendu que la question serait étudiée ultérieurement lorsque le point de savoir quelles sont les personnes qui, d'après les différentes lois nationales, ont le droit d'exercer une action contre le transporteur, aura été élucidé.

Il est à signaler encore que l'article 33 admet les clauses d'arbitrage qui ne dérogent pas aux règles de compétence prévues dans la Convention.

Telles sont les lignes générales du projet qui contient les deux matières adoptées déjà dans leurs principes essentiels par le C. I. T. E. J. A.

L'œuvre ainsi présentée a paru suffisamment complète à la Deuxième Commission pour pouvoir faire l'objet d'une Convention définitive qui serait un premier pas dans l'unification du droit aérien et c'est pour réaliser cette première étape qu'elle propose au C. I. T. E. J. A. de ratifier le projet de Convention qui lui est soumis.

15 mai 1928.

Henry de Vos.

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